

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 78/335,256
For the mark HOMESTYLE BISTRO
Published in the Official Gazette on September 21, 2004

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HOME BISTRO FOODS, INC., :

Opposer, :

v. : Opposition No.

LUIGINO'S, INC., : TRANSMITTAL LETTER

Applicant. :
-----X

BOX TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Sir/Madam:

Enclosed for filing is an original Notice of Opposition against Application Serial No. 78/335,256 that was published in the Official Gazette on September 21, 2004, as well as two copies of the Notice of Opposition.

Also enclosed is a check for \$600.00 (\$300.00 per class) for the filing fee for the Notice of Opposition in two classes. If the check is missing or insufficient, the Commissioner is authorized to charge the Salans Deposit Account No. 50-1628.

Also enclosed is a self-addressed stamped postcard for acknowledging safe receipt of this document.

Respectfully submitted,

Dated: New York, New York
January 14, 2005

SALANS

By:


Lora A. Moffatt
Joseph Petersen
Rockefeller Center
620 Fifth Avenue
New York, NY 10020
Phone: (212) 632-5500
Fax: (212) 632-5555

Attorneys for Opposer
HOME BISTRO FOODS, INC.



01-18-2005

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #66

TTAB

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NOTICE OF OPPOSITION

HOME BISTRO FOODS, INC., a New York corporation with a place of business located at 190 Banker Rd. #1, P.O. Box 2216, Plattsburgh, New York 12901 ("Opposer"), believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. Since at least as early as 1999, Opposer has manufactured and distributed a broad array of prepared and packaged ready to cook gourmet food products in connection with the trademark HOME BISTRO for which Opposer has received and currently owns U.S. Trademark Registration No. 2,802,617 ("Opposer's HOME BISTRO® Mark").

2. Opposer's U.S. Trademark Registration for Opposer's HOME BISTRO® Mark is valid, subsisting and in full force and effect. A true and correct copy of a

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01-18-2005

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printout from TESS concerning Opposer's HOME BISTRO® Mark is attached hereto as Exhibit A.

3. Since at least as early as 1999, Opposer has extensively advertised and promoted throughout the United States its goods and services in connection with Opposer's HOME BISTRO® Mark. As a result, Opposer's HOME BISTRO® Mark has become well-known and is identified in the minds of the public and trade as evidencing goods and services that emanate from Opposer.

4. Notwithstanding Opposer's prior rights to Opposer's HOME BISTRO® Mark, applicant Luigino's, Inc. ("Applicant") filed intent-to-use application Serial No. 78/335,256 ("the '256 Application") on December 2, 2003 for the mark HOMESTYLE BISTRO ("Applicant's HOMESTYLE BISTRO Mark").

5. Applicant's HOMESTYLE BISTRO Mark is very similar in sound, appearance and commercial impression to Opposer's HOME BISTRO® Mark. This similarity in sound, appearance and commercial impression is exacerbated by the fact that the types of goods offered by Applicant in connection with Applicant's HOMESTYLE BISTRO Mark, namely prepared frozen or packaged entrees or meals consisting primarily of meat, fish, poultry, seafood, cheese, fruit and/or vegetables in International Class 29 and prepared frozen or packaged entrees consisting primarily of rice, pasta and/or dough in International Class 30, are identical or substantially identical to the types of goods offered by Opposer in connection with Opposer's HOME BISTRO® Mark, namely prepared and packaged ready to cook food products, namely, meat, poultry, seafood, prepared vegetables, soups, prepared appetizers consisting primarily of meat, poultry, seafood, or vegetables, and prepared entrees consisting

of meat, poultry, seafood, or vegetables in International Class 29 and prepared and packaged ready to cook food products, namely, pasta and prepared entrees consisting primarily of pasta, rice, or processed cereals; bakery goods, namely bread cakes, pastries, fruit tarts, pies, cookies, brownies, granola-based snack bars, and cheesecake; ice cream, chocolate; cake mixes, pie mixes, pastry mixes, icing mixes, frosting mixes; quiche; sauces; seasonings; spices; tea; coffee in International Class 30.

6. Individuals familiar with Opposer's HOME BISTRO® Mark are likely, upon seeing Applicant's HOMESTYLE BISTRO Mark, to ascribe a common source of origin or sponsorship to Opposer's HOME BISTRO® Mark. Opposer is not connected in any way with the goods offered by Applicant, yet the mark of the Applicant leaves substantially the same commercial impression as goods and services offered by Opposer in connection with Opposer's HOME BISTRO® Mark.

7. Accordingly, Applicant's HOMESTYLE BISTRO Mark, when used in conjunction with the goods of Applicant set forth in the '256 Application, so resembles Opposer's HOME BISTRO® Mark as to cause confusion or cause mistake, or to deceive as to the source of origin or sponsorship of Applicant's goods with consequent injury to Opposer and the public.

8. Upon information and belief, Applicant did not make any use of Applicant's HOMESTYLE BISTRO Mark on the goods identified in the '256 Application prior to December 2, 2003, the filing date of the '256 Application. There is therefore no issue as to priority.

9. The Applicant's date of filing its intent-to-use application for Applicant's HOMESTYLE BISTRO Mark is well after the date Opposer began using Opposer's HOME BISTRO® Mark in commerce.

10. If the Applicant is permitted to use and register Applicant's HOMESTYLE BISTRO Mark, as specified in the application herein opposed, confusion in trade resulting in damage and injury to the Opposer would be caused and would result by reason of the similarity between Applicant's HOMESTYLE BISTRO Mark and Opposer's HOME BISTRO® Mark. Persons familiar with Opposer's HOME BISTRO® Mark would be likely to buy Applicant's goods as and for a product made and sold by the Opposer. Any such confusion in the trade inevitably would result in loss of sales to the Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under Applicant's HOMESTYLE BISTRO Mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its goods and services.

11. If the Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of Applicant's HOMESTYLE BISTRO Mark. Such registration would be a source of damage and injury to the Opposer.

WHEREFORE, Opposer believes that it would be damaged by registration of Applicant's HOMESTYLE BISTRO Mark and prays that this opposition be sustained and registration for the '256 Application be denied.

Please recognize as attorneys for Opposer Lora A. Moffatt, Esq. and Joseph Petersen, Esq. (members of the bar of the State of New York) and the firm of Salans,

Rockefeller Center, 620 Fifth Avenue, New York, New York 10020. Please address all communications to Lora A. Moffatt, Esq. of said firm.

Dated: New York, New York
January 14, 2005

SALANS

By: 

Lora A. Moffatt
Joseph Petersen
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620 Fifth Avenue
New York, NY 10020
Phone: (212) 632-5500
Fax: (212) 632-5555

Attorneys for Opposer
HOME BISTRO FOODS, INC.

Certificate of Express Mailing

EXPRESS MAIL NO. ED 233451635 US
DATE OF DEPOSIT: JANUARY 14, 2005

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to BOX TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451.

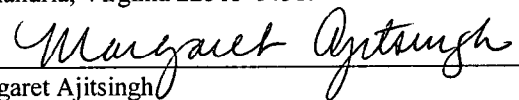

Margaret Ajitsingh

EXHIBIT A

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Attorneys for Opposer
HOME BISTRO FOODS, INC.,



UNITED STATES PATENT AND TRADEMARK OFFICE

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Record 3 out of 3

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Typed Drawing

Word Mark HOME BISTRO**Goods and Services** IC 035. US 100 101 102. G & S: retail store services, available through on-line computer communications, phone-in order, mail order, and direct solicitation by sales agents in the field, of food and grocery products. FIRST USE: 19990901. FIRST USE IN COMMERCE: 19990901

IC 030. US 046. G & S: prepared and packaged ready to cook food products, namely, pasta and prepared entrees consisting primarily of pasta, rice, or processed cereals; bakery goods, namely bread cakes, pastries, fruit tarts, pies, cookies, brownies, granola-based snack bars, and cheesecake; ice cream, chocolate; cake mixes, pie mixes, pastry mixes, icing mixes, frosting mixes; quiche; sauces; seasonings; spices; tea; coffee. FIRST USE: 19990901. FIRST USE IN COMMERCE: 19990901

IC 029. US 046. G & S: prepared and packaged ready to cook food products, namely, meat, poultry, seafood, prepared vegetables, soups, prepared appetizers consisting primarily of meat, poultry, seafood, or vegetables, and prepared entrees consisting of meat, poultry, seafood, or vegetables. FIRST USE: 19990901. FIRST USE IN COMMERCE: 19990901

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75656452

Filing Date

March 9, 1999

Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition October 8, 2002
Registration Number 2802617
Registration Date January 6, 2004
Owner (REGISTRANT) CHESTNUT DIRECT, INC. CORPORATION NEW YORK 1320 STONY BROOK RD. STONYBROOK NEW YORK 11790

(LAST LISTED OWNER) HOME BISTRO FOODS, INC. CORPORATION NEW YORK 190 BANKER RD. #1 PO BOX 2216 PLATTSBURGH NEW YORK 12901
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Karon S. Walker
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSER DICT	TOP	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

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